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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ELAINE KOSOGON, Plaintiff, vs. FIRST NATIONAL BANK OF OMAHA, Defendant.	**Case No.:** **COMPLAINT AND DEMAND FOR JURY TRIAL** **1. TCPA, 47 U.S.C. § 227; and** **2. CAL. CIV. CODE § 1788 *et seq*.** **(Unlawful Debt Collection Practices)**

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, Elain Kosogon ("Plaintiff"), through her attorneys, alleges the following against Defendant, First National Bank of Omaha ("Defendant"):

INTRODUCTION

1. Count I of Plaintiff's Complaint is based upon the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227. The TCPA is a federal statute that broadly regulates the use of automated telephone equipment. Among other things, the TCPA prohibits certain unsolicited marketing calls, restricts the use of automatic

dialers or prerecorded messages, and delegates rulemaking authority to the Federal Communications Commission ("FCC").

2. Count II of Plaintiff's Complaint is based upon Rosenthal Fair Debt Collection Practices Act ("RFDCPA"), CAL. CIV. CODE § 1788, which prohibits debt collectors from engaging in abusive, deceptive, and unfair practices in connection with the collection of consumer debts.

JURISDICTION AND VENUE

3. Jurisdiction of this court arises under 47 U.S.C. § 227 et seq. and 28 U.S.C. 1331.

4. Venue is proper pursuant to 28 U.S.C. 1391(b)(2) in that a substantial part of the events or omissions giving rise to the claim occurred in this District. Because Defendant availed itself here, personal jurisdiction is established.

PARTIES

5. Plaintiff is a natural person residing in the state of California.

6. Plaintiff is a "debtor" as defined by CAL. CIV. CODE § 1788.2(h).

7. Defendant is a "debt collector" as defined by CAL. CIV. CODE §1788.2(c), and sought to collect a consumer debt from Plaintiff.

8. Defendant is a debt collector with its principle place of business located at 1620 Dodge Street, Omaha, Nebraska, 68197.

9. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

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FACTUAL ALLEGATIONS

10. In or around July 2016, in an attempt to collect on the alleged consumer account, Plaintiff began receiving calls on her cellular phone number; (818) 648-5413.

11. Defendant called from the following numbers: (800) 537-3302; (800) 424-6920; and (888) 893-9519.

12. Upon information and belief, Defendant owns and operates the phone numbers.

13. On or about July 21, 2016, at 2:24 p.m., Plaintiff received a call on her cellular telephone from (800) 537-302 and spoke with Kristina; at which point Plaintiff unequivocally revoked consent to be contacted any further.

14. Between July 21, 2016 and August 24, 2016, Defendant called Plaintiff approximately forty (40) times, which included an after-hours call on August 17, 2016, at 10:08 p.m.

15. On or about August 24, 2016, at 8:42 a.m., Plaintiff received a call on her cellular telephone from (888) 893-9519 and spoke with Patty; at which point Plaintiff unequivocally revoked consent to be contacted a second time.

16. Despite revoking consent to be contacted, Defendant called Plaintiff on her cellular phone between July 5, 2016 and November 21, 2016, approximately one-hundred and fifty (150) times to annoy and harass Plaintiff in the hopes that they could induce Plaintiff to pay the debt.

17. Each time Plaintiff received a phone call from Defendant there was a brief pause prior to speaking with a representative indicating the use of an automated telephone dialing system.

18. Defendant also left multiple pre-recorded messages for Plaintiff.

19. Defendant would consistently call shortly after 8:00 a.m., waking Plaintiff.

20. Defendant would often disrupt Plaintiff's meals causing her to have to stop cooking, or eating, to answer her phone.

21. Due to Defendant's actions, Plaintiff has suffered emotional distress, invasion of privacy, and actual damages.

COUNT I

(Violations of the TCPA, 47 U.S.C. § 227)

22. Defendant violated the TCPA. Defendant's violations include, but are not limited to the following:

   a. Within four years prior to the filing of this action, on multiple occasions, Defendant violated TCPA 47 U.S.C. § 227 (b)(1)(A)(iii) which states in pertinent part, "It shall be unlawful for any person within the United States . . . to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice — to any telephone number assigned to a . . . cellular telephone service . . . or any service for which the called party is charged for the call.

   b. Within four years prior to the filing of this action, on multiple occasions, Defendant willfully and/or knowingly contacted Plaintiff at Plaintiff's cellular telephone using an artificial prerecorded voice or an automatic telephone dialing system and as such, Defendant knowing and/or willfully violated the TCPA.

23. As a result of Defendant's violations of 47 U.S.C. § 227, Plaintiff is entitled to an award of five hundred dollars ($500.00) in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B). If the Court finds that Defendant knowingly and/or willfully violated the TCPA, Plaintiff is entitled to an award of one thousand five hundred dollars ($1,500.00), for each and every violation pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

COUNT II
(Violation of the Rosenthal Fair Debt Collection Practices Act, CAL. CIV. CODE § 1788)

24. Plaintiff incorporates herein by reference all of the above paragraphs of this complaint as though fully set forth herein at length.

25. Defendant violated the RFDCPA. Defendant's violations include, but are not limited to, the following:

    a. Defendant violated CAL. CIV. CODE § 1788.11(d) by causing a telephone to ring repeatedly or continuously to annoy the person called;

    b. Defendant violated CAL. CIV. CODE § 1788.11(e) by communicating, by telephone or in person, with the debtor with such frequency as to be unreasonable and to constitute a harassment to the debtor under the circumstances; and

    c. Defendant violated CAL. CIV. CODE § 1788.17 by collecting or attempting to collect a consumer debt without complying with the provisions of

Sections 1692b to 1692j, inclusive, of . . . Title 15 of the United States Code (Fair Debt Collection Practices Act).

i. Defendant violated CAL. CIV. CODE § 1788.17 by violating 15 U.S.C. § 1692d by engaging in conduct, the natural consequence of which is to harass, oppress or abuse any person in connection with the collection of the alleged debt; and

ii. Defendant violated CAL. CIV. CODE § 1788.17 by violating 15 U.S.C. § 1692d(5) by causing Plaintiff's phone to ring or engaging Plaintiff in telephone conversations repeatedly; and

iii. Defendant violated CAL. CIV. CODE § 1788.17 by violating 15 U.S.C. § 1692f by using unfair or unconscionable means in connection with the collection of an alleged debt.

26. Defendant's acts, as described above, were done intentionally with the purpose of coercing Plaintiff to pay the alleged debt.

27. As a result of the foregoing violations of the RFDCPA, Defendant is liable to Plaintiff for declaratory judgment that Defendant's conduce violated the RFDCPA, actual damages, statutory damages, and attorneys' fees and costs.

PRAYER OF RELIEF

WHEREFORE, Plaintiff, Elaine Kosogon, respectfully requests judgment be entered against Defendant, First National Bank of Omaha, for the following:

A. Statutory damages of $500.00 for each and every negligent violation of the TCPA pursuant to 47 U.S.C. § (b)(3)(B);

B. Statutory damages of $1500.00 for each and every knowing and/or willful violation of the TCPA pursuant to 47 U.S.C. § (b)(3)(B) and 47 U.S.C. § (b)(3)(C);

C. Statutory damages of $1000.00 pursuant to the Rosenthal Fair Debt Collection Practices Act, CAL. CIV. CODE §1788.30(b),

D. Actual damages pursuant to CAL. CIV. CODE § 1788.30(a);

E. Costs and reasonable attorneys' fees pursuant to the Rosenthal Fair Debt Collection Practices Act, CAL. CIV. CODE § 1788.30(c), and

F. Any other relief that this Honorable Court deems appropriate.

Respectfully submitted this 12th day of April, 2017.

PRICE LAW GROUP, APC

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